

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TRISTATE ROOFING INC., a Washington  
corporation,

Plaintiff,

v.

ACHTEN'S QUALITY ROOFING &  
CONSTRUCTION, INC., a Washington  
corporation,

Defendant.

CASE NO. 3:22-cv-05835-RJB

ORDER ON DEFENDANT'S  
MOTION TO COMPEL

This matter comes before the Court on the Defendant Achten's Quality Roofing and Construction, Inc.'s ("Achten") Motion to Compel. Dkt. 45. The Court has considered the pleadings filed regarding the motion and the remaining file.

On October 31, 2022, the Plaintiff Tristate Roofing Inc. ("Tristate") filed this federal trademark case in connection with the Defendant Achten's alleged impermissible use of Tristate's mark WE GOT YOU COVERED. Dkt. 1. On December 12, 2022, Tristate filed its First Amended Complaint, asserting claims for "federal unfair competition" under 15 U.S.C. §

1 1125(a), “registered service-mark infringement” pursuant to 15 U.S.C. §§ 1116 and 1117, “mark  
2 dilution,” and violation of the Washington State Consumer Protection Act, RCW 19.86.020, *et*.  
3 *seq.* Dkt. 21.

4 On January 18, 2023, Defendant Achten propounded its first set of interrogatories and  
5 requests for production. Dkt. 46 at 4-29. On February 20, 2023, Plaintiff Tristate responded.  
6 Dkt. 47 at 9-53. On March 8, 2023, Defendant Achten emailed Plaintiff Tristate, detailing  
7 discovery not produced and requesting a meeting to confer about it. Dkt. 47. On March 16,  
8 2023, the parties held a teleconference to discuss the outstanding discovery. *Id.* After an  
9 exchange of emails regarding proposed protective orders, Defendant set several more emails to  
10 the Plaintiff about the outstanding discovery. *Id.* On April 17, 2023, the parties held another  
11 conference call to discuss the discovery. *Id.*

12 On Saturday, April 22, 2023, Plaintiff Tristate mailed a flash drive, with around 4,000  
13 pages of discovery on it, to the Defendant. Dkts. 53 at 4 and 53-3 at 2.

14 This motion to compel was filed on April 27, 2023. Dkt. 52. After receiving the motion  
15 to compel, the Plaintiff contacted the Defendant and asked that it withdraw the motion to compel  
16 because it had now sent the documents. *Id.* On May 1, 2023, Defendant Achten received the  
17 flash drive by mail. Dkt. 53-3 at 2.

18 Defendant Achten moves for an order compelling Plaintiff Tristate to fully respond to  
19 Achten’s January 18, 2023 discovery requests and for an award of attorneys’ fees and costs.  
20 Dkt. 45. In its May 6, 2023 response, Plaintiff Tristate opposes the motion arguing that it has  
21 now responded to the discovery requests and the parties should have met and conferred after the  
22 supplemental responses were sent. Dkt. 52. Defendant Achten filed a reply and argues that  
23  
24

1 some of the discovery is still outstanding. Dkt. 55. For the reasons provided, the motion (Dkt.  
2 45) should be granted.

3 **A. MEET AND CONFER**

4 Fed. R. Civ. P. Rule (“Rule”) 37(a)(1), “Motion for Order Compelling Disclosure or  
5 Discovery,” provides,

6 On notice to other parties and all affected persons, a party may move for an order  
7 compelling disclosure or discovery. The motion must include a certification that  
8 the movant has in good faith conferred or attempted to confer with the person or  
party failing to make disclosure or discovery in an effort to obtain it without court  
action.

9 Local Rule for Western District of Washington (“Local Rule”) 37(a)(1) additionally  
10 provides:

11 Any motion for an order compelling disclosure or discovery must include a  
12 certification, in the motion or in a declaration of affidavit, that the movant has in  
13 good faith conferred or attempted to confer with the person or party failing to  
14 made disclosure or discovery in an effort to resolve the dispute without court  
15 action. The certification must list the date, manner, and participants to the  
conference. If the movant fails to include such a certification, the court may deny  
the motion without addressing the merits of the dispute. A good faith effort to  
confer with a party or person not making a disclosure or discovery requires a face-  
to-face meeting or a telephone conference. . .

16 Counsel for both parties met by phone on March 16, 2023 and April 17, 2023 to discuss  
17 concerns regarding Plaintiff Tristate’s responses to Defendant’s discovery requests. While  
18 Plaintiff Tristate argues that the motion to compel should be denied because the parties should  
19 have held a third conference after the additional discovery was supplied on May 1, 2023, there is  
20 no requirement in the rules that a meet and confer is necessary after the motion is filed. The  
21 parties sufficiently met the requirements of Rule 37(a)(1) and Local Rule 37(a)(1).

22 **B. STANDARD ON DISCOVERY GENERALLY AND ON MOTION TO**  
23 **COMPEL**

Rule 26(b)(1) provides: “[U]nless otherwise limited by court order, the scope of discovery is as follows: parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case. . .” “The court should and ordinarily does interpret ‘relevant’ very broadly to mean matter that is relevant to anything that is or may become an issue in the litigation.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, n.12 (1978)(quoting 4 J. Moore, Federal Practice ¶ 26.56 [1], p. 26-131 n. 34 (2d ed. 1976)). Rule 37(a)(3)(B), provides in relevant part, that “[a] party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if: . . . (iii) a party fails to answer an interrogatory submitted under Rule 33, or (iv) a party fails to produce documents . . . as required under Rule 34.”

Defendant Achten’s motion to compel (Dkt. 45) should be granted. Plaintiff Tristate should be ordered to supplement its answers to Achten’s interrogatories. To the extent that Plaintiff Tristate has documents responsive to Requests for Production 3-9, 11-14, 17, 18 20, 21, 23, 27-32, 42, 43, 46-48 it should be ordered to produce those documents. Pursuant to Rule 34(b)(1)(C), a party requesting documents “may specify the form or forms in which electronically stored information is to be produced.” Defendant Achten requested that the documents be produced in “native format in which [they were] stored, with all original metadata intact.” Dkt. 46. Accordingly, to the extent that the Plaintiff has documents in its possession responsive to the discovery sought by Defendant, it should be produced in its native format, with original metadata intact (if it has it).

### **C. ATTORNEY FEES’ FOR MOTION**

Pursuant to Rule 37(a)(5)(A), if a motion to compel is granted the court must require the party whose conduct necessitated the motion to pay the movant’s reasonable expenses, including

attorneys' fees, incurred in making the motion unless "other circumstances make an award of expenses unjust."

Both Defendant and the Plaintiff move for an award of attorneys' fees. Dkts. 45 and 52. Both motions should be denied. The Plaintiff sent several thousand pages of discovery before the motion was filed. The motion was filed and then Defendant received the discovery by mail. Although the discovery was not fully responsive, the parties did not make further efforts to resolve the dispute before seeking court intervention. Accordingly, under these circumstances, an award of expenses is unjust.

The parties appear to be struggling to work together to complete basic tasks in this case. They are encouraged to make every effort to resolve issues like the ones raised here professionally and without court intervention.

### **ORDER**

It is **ORDERED** that:

- Defendant Achten's Quality Roofing and Construction, Inc.'s Motion to Compel (Dkt. 45) **IS GRANTED**, as to the motion to compel, and **DENIED** as to the motion for an award of expenses; and
- Plaintiff Tristate's motion for an award of expenses (Dkt. 52) **IS DENIED**.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

Dated this 17th day of May, 2023.



ROBERT J. BRYAN  
United States District Judge